

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Derrick Rivera,)	Civil Action No. 6:21-2017-BHH
)	
Plaintiff,)	
)	
v.)	
)	<u>OPINION AND ORDER</u>
)	
PFC Loos, Ofc. Cox, and Marcus D.)	
Rhodes,)	
)	
Defendants.)	
)	

Plaintiff Derrick Rivera ("Plaintiff"), proceeding *pro se*, brought this action pursuant to Title 42, United States Code, Section 1983. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B), D.S.C., this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial handling and a Report and Recommendation ("Report").

On November 18, 2021, Defendants Ofc. Cox and Marcus D. Rhodes filed a motion to dismiss for failure to state a claim (ECF No. 46), and on December 28, 2021, all Defendants filed a motion for summary judgment. (ECF No. 56.) Since Plaintiff is *pro se* in this matter, the Court entered orders pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) on November 19, 2021 and December 29, 2021, advising Plaintiff of the importance of a dispositive motion and of the need for him to file an adequate response. (ECF Nos. 48 & 58.) Plaintiff filed a response in opposition to the motion to dismiss on January 21, 2022 (ECF No. 76), and Defendants filed a reply on January 28, 2022 (ECF No. 78). Plaintiff did not file a response to the motion for summary judgment that was filed on behalf of all Defendants.

On June 8, 2022, Magistrate Judge McDonald issued a Report recommending that Plaintiff's claims be dismissed for failure to exhaust his administrative remedies, concluding that Defendants are entitled to Eleventh Amendment immunity on Plaintiff's claims for monetary relief against them in their official capacities, finding that Plaintiff's excessive force claim fails on the merits, concluding that Plaintiff's respondeat superior claim should be dismissed for failure to show that Director Rhodes had actual or constructive knowledge that a subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to people like Plaintiff, and determining that Defendants are entitled to qualified immunity. (ECF No. 87.) In summary, the Magistrate Judge recommended that this Court grant Defendants' motion for summary judgment (ECF No. 56), and noted that if the Court adopts this recommendation then Ofc. Cox and Director Rhodes' motion to dismiss (ECF No. 46) will be rendered moot. (*Id.* at 17.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. (*Id.* at 18.)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

Plaintiff filed no objections and the time for doing so expired on June 25, 2022. (*See*

Id. (noting objections were due by June 22, 2022, with an additional three days to be added if served by mail).) In the absence of objections to the Magistrate Judge's Report and Recommendation, this Court is not required to provide an explanation for adopting the recommendation. See *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 and advisory committee's note).

After reviewing the record, the Report, and the applicable law, the Court finds no error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 87) by reference into this Order. Defendants' motion for summary judgment (ECF No. 56) is GRANTED, Defendants Ofc. Cox and Director Rhodes' motion to dismiss (ECF No. 46) is moot, and this case is dismissed in its entirety.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

July 20, 2022
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.